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Supreme Court, U. S.
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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 648

HAROLD E. WEST, J. FRANK HARPER AND STEUART PURCELL, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF MARYLAND, APPELLANTS,

vs.

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF BALTIMORE CITY, APPELLEE.

Appeal from the District Court of the United States for the District of Maryland.

APPENDIX TO APPELLANTS' BRIEF.

RICHARD F. CLEVELAND,
JOHN HENRY LEWIN,
HERMAN M. MOSER,
Counsel for Appellants.

King Bros., Inc., Printers, 206 E. Calvert St., Baltimore, Md.

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Purpose and Nature of Appendix.

The sole purpose of this Appendix is to furnish to this Court the vitally relevant figures showing the results of the Telephone Company's operations for the

full year 1934. As the case was heard before the District Court in the last two weeks of March, 1934, only tentative results, for less than three months, were then known. Time and again this Court, in order to achieve practical justice in rate cases, has been forced to take judicial notice of changes in conditions since the cases were determined below. (*e. g., Lincoln Gas & Electric Co. vs. Lincoln*, 250 U. S. 256, 268; *Atchison, Topeka & S. F. R. R. vs. I. C. C.*, 284 U. S. 248, 260-1; *Central Kentucky Natural Gas Co. vs. Commission*, 290 U. S. 264, 274-5).

Frequently, too, this Court has emphasized the desirability of allowing a test period before filing suit to enjoin proposed rates. Thus, Mr. Justice Pitney, in *Lincoln Gas & Electric Co. vs. Lincoln, supra*, 262, observed: "As early as the month of January, 1909, this Court, in two notable rate cases, indicated its view of the importance, in any but a very clear case, of subjecting prescribed rates to the test of practical experience before attacking them in the courts. Knoxville v. Knoxville Water Co., 212 U. S. 1, 16, 18; Willcox v. Consolidated Gas Co., 212 U. S. 19, 54."

If judicial notice can supplement a record, and if a test period should have been allowed, but was not, we believe that this Court should be permitted to consider this case as a practical issue from knowledge of the actual present facts. Therefore, since the Company's results for 1934, the year primarily involved, are available from official reports of the Company to the Commission, the least counsel can do in fairness to this Court is to offer such results for the Court's examination, if it desires to consider them. It would have been more convenient and illuminating to show the bearing of the 1934 results in the Commission's brief, but as counsel for the Company felt they had no legal power to sanction that

procedure, we adopt this alternative. We introduce the figures with this brief foreword, so that, if this Court for any reason feels that consideration of the case must be technically restricted to the formal record, this separately bound Appendix may be discarded without being read.

We offer two sheets of summarized accounts. The first, referred to as Sheet No. 1, is a photolithographic reproduction of the Company's report to the Commission, showing for the month ending December 31, 1934, and cumulatively for the entire calendar year 1934, the Company's revenues, expenses, and some capital items. Sheet No. 2 is a form of the Company, similarly reproduced, showing the balance sheet as of December 31, 1934, compared with December 31, 1933. This sheet contains in condensed form the figures appearing on pages 200-1 of the Company's annual report for 1934, required by State law. Nothing is added, or in any way changed; the figures speak for themselves. Under such circumstances, the Company surely cannot complain. We believe that an actual undisputed record of such facts should be welcomed.

Application of 1934 Results.

The hearing before the Commission took place in the middle months of 1933, so that it used as its test of revenues, an estimate for 1933, which, as stated in our brief, was identical with the Company's estimate except that the Commission decreased depreciation expense and accordingly increased Federal income taxes. The Company's estimate of 1933 revenues was $2,658,000, and the Commission's estimate based thereon, but modified as described, was $3,353,793. This is shown in detail in the Commission's opinion at I, 76. Thus the *estimate*

for 1933, and the *actual* revenues for 1934, both under existing rates, are respectively the *a priori* and *a posteriori* criteria of the Commission's order, since it was based on the estimate, and becomes effective for 1934. On Sheet No. 1, line 24, it will be seen that the estimate for 1933 came closer to 1934 results than to 1933 results. The 1933 estimate was $13,500 above the 1934 results, while 1934 results were $216,800 above 1933 results. This shows that the 1933 estimate, for the purpose of an issue directed to 1934, was highly accurate. It may be noted, too, that the Company's estimate for 1934 before the District Court was $2,569,005 (II, 797), while the actual figure for 1934 was $2,544,437.

As repeatedly noted in our brief, the District Court's final allowance of net return in dollars was practically the same as the Commission's allowance, in spite of the District Court's excessive valuation based on prudent investment, and we stated therefore that the case *may* be narrowed down on appeal and decided in the Commission's favor if the Commission's allowance of depreciation expense was not clearly confiscatory, without *even considering* the District Court's erroneous valuation. In the brief we also emphasized that the District Court, although frankly admitting its serious doubts, arbitrarily decided, in its independent judgment, to find a substituted allowance for depreciation expense. The District Court in so doing acknowledged (I, 578) that the Commission's allowance would have been abundantly adequate for 1933, but seemed to settle its judgment finally against the Commission's finding because the Court *did not then know positively whether* 1934 *would likewise confirm the Commission.* Extraordinary as was *that* reason for condemning the Commission's judgment, even that reason is dispelled by the figures on Sheet No. 1.

In 1933, the Company added to depreciation reserve, $1,253,377 (I, 599, line 42), by far the largest increase in

its history, while it added only $33,332 to plant. As a result, the reserve rose from 20.46% to 22.96%. Under the Commission's allowance, the reserve would have increased $439,450,—in percentage from 20.46% to 21.33%. These facts seem almost conclusive in the Commission's favor without support from 1934 results. But, in 1934, the reserve again increased (under voluntary depreciation rates *lower* than in 1933) by $1,009,897, and rose in percentage from 22.96% to 24.94%, the highest percentage in the Company's history. (These figures complete the tables at pages 39 and 68 of the brief. The 1934 figure for column 6, page 38, is 43%.) If the Commission's allowance had been in effect in 1934, the reserve would still have increased by $206,562, and would have risen from 22.96% to 23.34%. *If* the Commission's allowance had been in effect for both 1933 and 1934, the percentage would have increased from 20.46% in 1932, to 21.33% in 1933, to 21.71% in 1934. In 1934 the plant increased only $66,815. These facts, we submit, absolutely and mathematically establish the liberality of the Commission's depreciation allowance for 1934. They remove all final vestige of the lurking doubt which the District Court erroneously resolved against the Commission on 1933 figures.

But Sheet No. 2 adds further practical confirmation to the fairness, even generosity, of the Commission's action. On line 40, which reconciles lines 38 and 39, it shows that the Company in 1934 had sufficient excess cash to pay off $1,205,000 of its long term indebtedness. In 1933 it had paid off $1,025,000 (I, 599, line 36; brief page 36). These payments, of course, are made out of cash received from subscribers through excess rates, of which the excess depreciation expense furnishes the largest part.

Here, then, is a Company which demonstrably has had enough excess cash from the ratepayers in two consecu-

tive years during this depression to pay over $1,000,000 each year in principal on its modest long term debt to Bell system companies, chiefly the A. T. & T. This Company now solemnly declares that it must not only have liberal operating expenses, interest, and large dividends for the A. T. & T., but that its property is being confiscated under the Constitution unless the ratepayers are made to pay an additional $1,000,000 a year of *principal* on its long term debt.

We submit that such a proposition is not only contrary to law; it conclusively taints and discredits the Company's position before this Court.

RICHARD F. CLEVELAND,
JOHN HENRY LEWIN,
HERMAN M. MOSER,
Counsel for Appellants.

P. S. C. Md. Monthly Report

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF BALTIMORE CITY

REPORT OF REVENUES, EXPENSES AND CAPITAL CHANGES FOR MONTH OF December, 1934

FIGURES FOR THE MONTH 1934 (a)	1933 (b)	Increase (In Black) or Decrease (In Red) (c)	ITEM (d)	CUMULATIVE FIGURES 1934 (e)	1933 (f)	Increase (In Black) or Decrease (In Red) (g)
204 998	199 127	5 871	1. Number of company stations in service at end of month			
			2. Number of company stations outside the U. S., included in Item 1			
			OPERATING REVENUES:			
766 527	733 532	32 995	3. Subscribers' station revenues (500)	8 886 483	8 682 221	204 262
75 389	67 333	8 056	4. Public telephone revenues (501)	812 754	727 809	84 945
8 916	7 952	964	5. Miscellaneous local service revenues (503, 504 and 505)	96 000	92 600	3 400
210 121	211 231	1 110	6. Message tolls (510)	2 579 583	2 388 855	190 728
7 676	9 938	2 262	7. Miscellaneous toll service revenues (512 and 513)	88 377	120 814	32 437
			8. Revenues from general services and licenses (525)			
36 632	36 954	322	9. Sundry miscellaneous revenues (521, 522, 524 and 526)	423 325	413 200	10 125
4 500	4 416	84	10. Uncollectible operating revenues—Dr. (530)	41 510	127 968	86 458
1 100 761	1 062 524	38 237	11. ϕ Operating revenues (Items 3 to 10, incl.)	12 845 012	12 297 531	547 481
			OPERATING EXPENSES:			
179 095	180 689	1 594	12. Depreciation and extraordinary retirements (608 and 609)	2 155 619	2 201 853	46 234
200 387	190 718	9 669	13. All other maintenance (602, 604 to 607, incl., and 610 to 612, incl.)	2 230 332	2 072 210	158 122
169 144	156 201	12 943	14. Traffic expenses (621, 623, 624, 626, 627, and 629 to 635, incl.)	1 918 058	1 706 543	211 515
92 485	87 548	4 937	15. Commercial expenses (640, 642, to 645, incl., and 648 to 650, incl.)	1 060 491	1 022 320	38 171
49 921	50 563	642	16. General office salaries and expenses (661 to 665, incl.)	598 266	567 677	30 589
15 824	14 919	905	17. General services and licenses (674)	183 289	177 013	6 276
39 862	59 161	19 299	18. All other operating exp. (640, 642, 671, to 673, incl., & 675 to 677, incl.)	455 648	513 153	57 505
746 718	739 799	6 919	19. Operating expenses (Items 12 to 18, incl.)	8 601 703	8 260 769	340 934
			INCOME ITEMS:			
354 043	322 725	31 318	20. Net operating revenues (Item 11 less Item 19)	4 243 309	4 036 762	206 547
			21. Rent from lease of operating property (502)			
			22. Rent for lease of operating property (503)			
130 316	133 278	2 962	23. Operating taxes (505)	1 598 872	1 609 120	10 248
223 727	189 447	34 280	24. Net operating income (Items 20 and 21 less Items 22 and 23)	2 644 437	2 427 642	216 795
			CHANGES IN CAPITAL ITEMS:			
42 585	19 857		25. Increase in telephone plant (100)	66 815	33 332	
800	600		26. Increase in working capital	42 600	78 400	
62 595	102 976		27. Increase in depreciation reserve (171)	1 009 897	1 253 377	
			Commission's fair value Dec. 31, 1924 plus net additions:			
45 926 [illegible]	46 816 847		28. Average during period	46 314 615	47 346 769	
			29.			

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OF MARYLAND

22274

State of Maryland—City of Baltimore, ss:

Subscribed and sworn to before me this 23 day of January, 1935.

Herbert S. Glenk
Notary Public.

I, the undersigned H.C. Ross, Auditor of The Chesapeake and Potomac Telephone Company of Baltimore City, on my oath do say that the foregoing has been prepared under my direction from the original books, papers and records of said Company and is true to the best of my knowledge, information and belief.

ϕ See reverse side.

H. C. Ross
Auditor

SHEET No. 1

Revenues reported on Line 11 contain the following amounts subject to possible refund in whole or in part in a case now pending in the courts:

Col. (a)	Col. (b)	Col. (e)	Col. (f)
$ 90,800.	$	$1,090,000.	

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF BALTIMORE CITY

BALANCE SHEET December 31, 19 34
(Last Day of Month)

	ASSETS	a At End of Month	b Increase over Last Month	c Increase over Dec. 31 last	
1	Organization, Franchises & Patent Rights (301, 302, 303)	6 960 55			1
2	Right of Way (307)	893 004 59	435 26	29 293 93	2
3	Land (308)	429 205 37		149 36	3
4	Buildings (309)	3 038 703 84	1 036 64	6 365 76	4
5	Central Office Equipment (311)	11 819 080 68	2 981 66	60 412 15	5
6	Station Apparatus (312)	3 771 487 49	12 824 50	44 127 27	6
7	Station Instal[illegible], Drop and Block Wires (313, 314)	2 477 699 79	16 865 26	5 102 79	7
8	Other Station Equipment (315, 316)	2 153 302 27	1 418 04	29 687 56	8
9	Pole Lines (317)	3 283 302 09	3 534 26	43 561 15	9
10	Cable (318)	12 991 133 97	5 688 15	155 399 65	10
11	Aerial Wire (319)	2 100 042 10	2 461 55	48 511 65	11
12	Underground Conduit (320)	4 054 841 04	3 049 53	34 599 92	12
13	Furniture and Office Equipment (321)	437 213 99	1 107 36	5 030 34	13
14	Vehicles and Other Work Equipment (322)	370 041 08	15 782 38	21 307 43	14
15	Other Plant (323, 327, 328)	26 661 76			15
16	Construction Work in Progress (324)	239 433 68	09	325 36	16
17	Total Telephone Plant	39 892 094 23	42 585 06	66 815 40	17
18	Investments in Affiliated Companies (325)				18
19	Other Investments (326)	39 443 26	299 00	1 421 00	19
20	Miscellaneous Physical Property (329)	16 677 70		19 00	20
21	Sinking Funds (330)				21
22	Total Investments (Including Telephone Plant)	50 148 215 19	42 884 06	68 255 40	22
23	Cash and Special Cash Deposits (331, 332)	173 009 58	4 855 44	29 135 66	23
24	Temporary Cash Investments (333)				24
25	Material and Supplies (334)	285 538 65	15 139 33	69 898 11	25
26	Other Current Assets (335, 337, 338, 339, 341, 343)	1 251 803 13	40 312 78	70 959 51	26
27	Total Current Assets	1 710 351 36	50 596 67	169 993 28	27
28	Discount on Funded Debt (345)				28
29	Other Deferred Debit Items (129 to 134, 136 to 139)	413 285 15	82 908 23	86 165 46	29
30	Total Deferred Debits	413 285 15	82 908 23	86 165 46	30
31	Total Assets	52 271 851 70	75 195 62	152 083 22	31
	LIABILITIES				
32	Capital Stock, Com. (350-351) (Authorized $40,000,000.00)	30 000 000 00			32
33	Capital Stock, Pref. (350-351) (Authorized $12,500,000.00)	3 000 000 00			33
34	Premium on Capital Stock (352)	15 419 00			34
35	Capital Stock Installments (353)				35
36	Total Capital Stock	33 015 419 00			36
37	Funded Debt (354)				37
38	Advances from Affiliated Companies (356)	1 300 000 00	325 000 00	1 350 000 00	38
39	Other Long Term Debt (357)	1 450 643 65	73 307 19	144 921 82	39
40	Total Long Term Debt	2 750 643 65	398 307 19	1 205 078 18	40
41	Total Current Liabilities (358 to 365)	879 129 68	23 848 43	90 497 82	41
42	Accrued Liabilities Not Due (366, 367)	707 684 30	111 179 45	78 481 14	42
43	Total Deferred Credits (368, 374, 375)	1 667 80	60 54	1 075 03	43
44	Insurance Reserve (369)				44
45	Provident Reserve (370)	3 000 00	38 043 06		45
46	Depreciation Reserve (371)	12 493 254 70	62 595 21	1 009 897 14	46
47	Amortization Reserve (372)				47
48	Employment Stabilization Reserve (373)				48
49	Total Reserves	12 496 254 70	24 552 15	1 009 897 14	49
50	Surplus Reserved (280)	923 290 00	78 720 00	923 290 00	50
51	Unappropriated Surplus (281)	1 497 762 57	441 686 54	746 077 73	51
52	Total Surplus	2 421 052 57	362 906 54	177 212 27	52
53	Total Liabilities	52 271 851 70	75 195 62	152 083 22	53

To cover possible refunds under pending rate litigation.

Date issued January 22, 19 35.

Should be issued not later than 20th. # See reverse side.

Auditor.

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Account 139 - Other Deferred Debits includes:

Deposits in Failed Banks	$ 8,236.29
Deposits in Restricted Banks	270,634.69
	$278,870.98
Reserve for Deposits in Failed and Restricted Banks - Cr.	59,967.40
	$218,903.58

SHEET No. 2